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Education



Technical Assistance Paper

Zero Tolerance

Summary:

In 2009, the Florida Legislature amended section 1006.13, Florida Statutes, Florida's "zero-tolerance" law, to clarify that it was not intended to require expulsion or reporting students to law enforcement for petty acts. These changes became effective July 1, 2009.

Recognizing that certain disciplinary outcomes such as expulsion and referral to the juvenile justice system can limit a student's potential for success by excluding them from college or military service, it is incumbent upon districts to use discretion and take a "common sense" approach to school discipline. District administrators must investigate and take into consideration mitigating circumstances (on a case-by-case basis) when determining appropriate disciplinary responses to student misconduct.

The purpose of this Technical Assistance Paper (TAP) is to provide information to school district personnel who work with discipline-related programs and initiatives.

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A. Background and Introduction

A-1. What is the purpose of this technical assistance paper (TAP)?

The 2009 changes to section 1006.13, Florida Statutes, the state's "zero-tolerance" law, have raised questions regarding the appropriate disciplinary actions for offending students, and more specifically, how much discretion is afforded to districts when disciplining students for petty acts.

The purpose of this technical assistance paper is to provide further guidance to districts relating to discipline for petty acts, as well as to answer specific questions from district staff regarding the implementation of "zero-tolerance" policies.

B. Interpreting Section 1006.13, Florida Statutes

B-1. What does the revised statute require?

Under the revised statute, section 1006.13(1) states, "The Legislature finds that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances." Similarly, section 1006.13(4)(c) states, "Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000." In section 1006.13(3), the statute also states that students who are found to have committed one of the following offenses must be expelled and referred to the criminal justice system: (a) Bringing a firearm or weapon, as defined in chapter 790, to school, to any school function, or onto any school-sponsored transportation or possessing a firearm at school; or (b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

B-2. Is a school required to expel a student or report the student to law enforcement for petty acts which technically violate one of the two offenses listed in 1006.13(3)?

As an example, a student and his family moved from one house to another over the weekend. The student used his vehicle to transport boxes of household items. On Monday morning, household items were still in the student's vehicle, including a steak knife. The student has no history of disciplinary violations, and there was no evidence that the student used, threatened to use, or intended to use the steak knife for any illicit purpose. Would the school be required to expel the student or refer him to law enforcement?

The Department has concluded that the District is not required to expel a student or report a student to law enforcement for petty acts, even if the student is technically in violation of one of the two offenses listed in 1006.13(3). The explicit intent of the Legislature is to promote a safe school environment through zero-tolerance for conduct that is a "serious threat to school safety," and the districts are afforded discretion in cases involving petty

acts. District school boards are authorized under the act to define “acts that pose a serious threat to school safety” and “petty acts of misconduct.” Reading the act as a whole, the Department concludes that even conduct that technically violates one of the two offenses listed in 1006.13(3) may be included in the District’s definition of “petty acts of misconduct,” where the conduct does not compromise school safety.

B-3. Does the zero tolerance statute conflict with the federal Gun Free Schools Act?

The Department notes that, under the federal Gun Free Schools Act, 20 U.S.C. § 7151, state law must provide for expulsion where a student brings a firearm (as defined in Section 921 of Title 18 of the United States Code) to school, with exceptions as determined by the district’s chief administering officer on a case-by-case basis. Nothing within this technical assistance paper should be read to conflict with this federal law.

Appendix A

Florida Statutes: Zero Tolerance for Crime and Victimization

1006.13 Policy of zero tolerance for crime and victimization.--

(1) It is the intent of the Legislature to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. The Legislature finds that zero-tolerance policies are not intended to be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances. The Legislature finds that zero-tolerance policies must apply equally to all students regardless of their economic status, race, or disability.

(2) Each district school board shall adopt a policy of zero tolerance that:

(a) Defines criteria for reporting to a law enforcement agency any act that occurs whenever or wherever students are within the jurisdiction of the district school board.

(b) Defines acts that pose a serious threat to school safety.

(c) Defines petty acts of misconduct.

(d) Minimizes the victimization of students, staff, or volunteers, including taking all steps necessary to protect the victim of any violent crime from any further victimization.

(e) Establishes a procedure that provides each student with the opportunity for a review of the disciplinary action imposed pursuant to s. 1006.07.

(3) Zero-tolerance policies must require students found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student's regular school for a period of not less than 1 full year, and to be referred to the criminal justice or juvenile justice system.

(a) Bringing a firearm or weapon, as defined in chapter 790, to school, to any school function, or onto any school-sponsored transportation or possessing a firearm at school.

(b) Making a threat or false report, as defined by ss. 790.162 and 790.163, respectively, involving school or school personnel's property, school transportation, or a school-sponsored activity.

District school boards may assign the student to a disciplinary program for the purpose of continuing educational services during the period of expulsion. District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system. If a student committing any of the offenses in this subsection is a student who has a disability, the district school board shall comply with applicable State Board of Education rules.

(4)(a) Each district school board shall enter into agreements with the county sheriff's office and local police department specifying guidelines for ensuring that acts that pose a serious threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency.

(b) The agreements must include the role of school resource officers, if applicable, in handling reported incidents, circumstances in which school officials may handle incidents without filing a report with a law enforcement agency, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes.

(c) Zero-tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000.

(d) The school principal shall ensure that all school personnel are properly informed as to their responsibilities regarding crime reporting, that appropriate delinquent acts and crimes are properly reported, and that actions taken in cases with special circumstances are properly taken and documented.

(5) Notwithstanding any other provision of law, each district school board shall adopt rules providing that any student found to have committed any offense in s. 784.081(1), (2), or (3) shall be expelled or placed in an alternative school setting or other program, as appropriate. Upon being charged with the offense, the student shall be removed from the classroom immediately and placed in an alternative school setting pending disposition.

(6)(a) Notwithstanding any provision of law prohibiting the disclosure of the identity of a minor, whenever any student who is attending a public school is adjudicated guilty of or delinquent for, or is found to have committed, regardless of whether adjudication is withheld, or pleads guilty or nolo contendere to, a felony violation of:

1. Chapter 782, relating to homicide;
2. Chapter 784, relating to assault, battery, and culpable negligence;
3. Chapter 787, relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses;
4. Chapter 794, relating to sexual battery;
5. Chapter 800, relating to lewdness and indecent exposure;
6. Chapter 827, relating to abuse of children;
7. Section 812.13, relating to robbery;
8. Section 812.131, relating to robbery by sudden snatching;

9. Section 812.133, relating to carjacking; or

10. Section 812.135, relating to home-invasion robbery,

and, before or at the time of such adjudication, withholding of adjudication, or plea, the offender was attending a school attended by the victim or a sibling of the victim of the offense, the Department of Juvenile Justice shall notify the appropriate district school board of the adjudication or plea, the requirements in this paragraph, and whether the offender is prohibited from attending that school or riding on a school bus whenever the victim or a sibling of the victim is attending the same school or riding on the same school bus, except as provided pursuant to a written disposition order under s. 985.455(2). Upon receipt of such notice, the district school board shall take appropriate action to effectuate the provisions in paragraph (b).

(b) Each district school board shall adopt a cooperative agreement with the Department of Juvenile Justice which establishes guidelines for ensuring that any no contact order entered by a court is reported and enforced and that all of the necessary steps are taken to protect the victim of the offense. Any offender described in paragraph (a), who is not exempted as provided in paragraph (a), may not attend any school attended by the victim or a sibling of the victim of the offense or ride on a school bus on which the victim or a sibling of the victim is riding. The offender shall be permitted by the district school board to attend another school within the district in which the offender resides, only if the other school is not attended by the victim or sibling of the victim of the offense; or the offender may be permitted by another district school board to attend a school in that district if the offender is unable to attend any school in the district in which the offender resides.

(c) If the offender is unable to attend any other school in the district in which the offender resides and is prohibited from attending a school in another school district, the district school board in the school district in which the offender resides shall take every reasonable precaution to keep the offender separated from the victim while on school grounds or on school transportation. The steps to be taken by a district school board to keep the offender separated from the victim must include, but are not limited to, in-school suspension of the offender and the scheduling of classes, lunch, or other school activities of the victim and the offender so as not to coincide.

(d) The offender, or the parents of the offender if the offender is a juvenile, shall arrange and pay for transportation associated with or required by the offender's attending another school or that would be required as a consequence of the prohibition against riding on a school bus on which the victim or a sibling of the victim is riding. However, the offender or the parents of the offender may not be charged for existing modes of transportation that can be used by the offender at no additional cost to the district school board.

(7) Any disciplinary or prosecutorial action taken against a student who violates a zero-tolerance policy must be based on the particular circumstances of the student's misconduct.

(8) School districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

History.--s. 283, ch. 2002-387; s. 129, ch. 2006-120; s. 3, ch. 2009-53.

Appendix B

Federal Statutes: Gun Free Schools Act, 20 U.S.C. § 7151

(a) **SHORT TITLE-** This subpart may be cited as the “Gun-Free Schools Act”.

(b) **REQUIREMENTS-**

(1) **IN GENERAL-** Each State receiving Federal funds under any title of this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

(2) **CONSTRUCTION-** Nothing in this subpart shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

(3) **DEFINITION-** For the purpose of this section, the term “firearm” has the same meaning given such term in section 921(a) of title 18, United States Code.

(c) **SPECIAL RULE-** The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

(d) **REPORT TO STATE-** Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under any title of this Act shall provide to the State, in the application requesting such assistance —

(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and

(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including —

(A) the name of the school concerned;

(B) the number of students expelled from such school; and

(C) the type of firearms concerned.

(e) **REPORTING-** Each State shall report the information described in subsection (d) to the Secretary on an annual basis.

(f) **DEFINITION-** For the purpose of subsection (d), the term “school” means any setting that is under the control and supervision of the local educational agency for the purpose of student activities approved and authorized by the local educational agency.

(g) **EXCEPTION-** Nothing in this section shall apply to a firearm that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.

(h) **POLICY REGARDING CRIMINAL JUSTICE SYSTEM REFERRAL-**

(1) **IN GENERAL-** No funds shall be made available under any title of this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency.

(2) **DEFINITION-** For the purpose of this subsection, the term “school” has the same meaning given to such term by section 921(a) of title 18, United States Code.